

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**THE ESTATE OF ARTURO
ARZATE-NORATO,**

Plaintiff,

v.

**FEDERAL LIFE INSURANCE
COMPANY,**

Defendant

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**CIVIL ACTION FILE
NO. 1:17-cv-01440-WSD**

**PLAINTIFF'S RESPONSE IN OPPOSITION TO FEDERAL
LIFE INSURANCE COMPANY'S MOTION FOR SUMMARY JUDGMENT**

COMES NOW Plaintiff, The Estate of Arturo Arzate-Norato, by and through its Counsel, and files Plaintiff's Response in Opposition to Federal Life Insurance Company's Motion for Summary Judgment and, in support thereof, shows the following:

Statement of Facts

On or about July 15, 2015, Arturo Arzate-Norato submitted an application to Defendant Federal Life Insurance Company for an individual life insurance policy. On or about July 21, 2015, Ms. Mary Osborne, Defendant's Senior Service Representative, notified Mr. Arzate-Norato's daughter, Ms. Geraldine Arzate, that

the application had been approved. Subsequently, on July 23, 2015, Ms. Myrna Mack, Defendant's agent, again notified Ms. Arzate that the application had been approved and that the policy would "be in force once the first premium is paid."

On September 27, 2015, Mr. Arzate-Norato passed away. Mr. Arzate-Norato's children, Ms. Geraldine Arzate and Mr. Arturo Arzate, Jr., submitted a claim to Defendant for death benefits. Subsequently, Defendant rescinded the policy and denied the claim. Thereafter, on April 6, 2017, Plaintiff filed a "Complaint for Damages."

Argument and Citation of Authority

Pursuant to Rule 56(a) of the Federal Rules of Civil Procedure, "... [t]he Court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." In light of this, the Court must deny Defendant's motion.

A. Plaintiff has exercised due diligence by requesting leave of court to amend the pleading to substitute parties.

In its Motion for Summary Judgment, Defendant argued that Defendant lacked standing on April 6, 2017, when the action was filed because no estate existed at that time. According to Rule 15(a)(2), "... a party may amend its pleading only with the opposing party's consent or the court's leave. The court

should freely give leave when justice so requires.” On October 19, 2017, Plaintiff exercised due diligence by filing “Plaintiff’s Motion to Amend Complaint to Substitute Parties, which is attached hereto as Exhibit “A.” In this motion, Plaintiff moved the Court to remove The Estate of Arturo Arzate-Norato as Plaintiff and to substitute Mr. Arzate-Norato’s children, Geraldine Arzate and Arturo Arzate, Jr., as Plaintiffs as they were the named beneficiaries to Mr. Arzate-Norato’s life insurance policy. To date, the Court has not ruled on that motion. Defendant, therefore, is not entitled to judgment in its favor as a matter of law on the issue of standing.

B. The issue of whether or not Defendant properly rescinded Mr. Arzate-Norato’s policy and rightfully denied the death benefits should be determined by a jury.

Defendant Federal Life Insurance Company admits that a life insurance policy was issued to Mr. Arzate-Norato “non-medically,” without a review of his medical records but based solely on the responses provided in Mr. Arzate-Norato’s application. However, Defendant now also states that its rescission of the contract and subsequent denial of benefits were proper because of the alleged “several material misrepresentations” contained in Mr. Arzate-Norato’s application. It is well-established that “ordinarily it is a jury question as to whether a

misrepresentation is material”¹ That principle should especially be followed in this case. Defendant has argued that it is immaterial whether or not Mr. Arzate-Norato misunderstood the questions because of a language barrier. However, that issue cannot be ignored, especially when Defendant relied solely on Mr. Arzate-Norato’s responses as the basis for issuing the policy. Mr. Arzate-Norato spoke very little English, and he could neither read nor write in English.² Thus, contrary to Defendant’s erroneous statement, Mr. Arzate-Norato did not review the application before signing the document. Rather, Defendant’s agent, Ms. Myrna Mack, read and completed the application. Thus, the question of whether Mr. Arzate-Norato fully understood both the application’s questions and his responses is relevant. Those facts cannot simply be ignored as Defendants has asked this Court to do, and, thus, Defendant should not summarily be granted a judgment in its favor. Instead, the question of whether Defendant properly rescinded Mr. Arzate’s policy and denied the death benefit because of alleged misrepresentations in his insurance application should be determined by a jury.

CONCLUSION

For the within and foregoing reasons, Plaintiff prays that this Honorable

¹ *United Family Life Insurance Company v. Shirley*, 242 Ga. 235, 236 (1978).

² See Affidavit of Geraldine Arzate-Norato attached as Exhibit “B.”

Court finds that there is a genuine issue of material facts, such as should be decided by a jury, and further prays that Defendant's Motion for Summary Judgment be denied.

Respectfully submitted this the 22nd day of November, 2017.

s/Romero Pearson
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